

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

VIRAY HEATH,

Plaintiff,

v.

AMERIGROUP CORPORATION,

Defendant.

CIVIL COMPLAINT

CASE NO. 3:18-cv-00185

JURY DEMAND

COMPLAINT

NOW comes VIRAY HEATH (“Plaintiff”), by and through her attorneys, Sulaiman Law Group, Ltd. (“Sulaiman”), complaining as to the conduct of AMERIGROUP CORPORATION (“Defendant”), as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action for damages pursuant to the Telephone Consumer Protection Act (“TCPA”) under 47 U.S.C. § 227 *et seq.* for Defendant’s unlawful conduct.

JURISDICTION AND VENUE

2. This action arises under and is brought pursuant to the TCPA. Subject matter jurisdiction is conferred upon this Court by 47 U.S.C § 227, 28 U.S.C. §§ 1331 and 1337, as the action arises under the laws of the United States.

3. Venue is proper in this Court pursuant to 28 U.S.C. §1391 as Defendant conducts business in the Northern District of Texas and a substantial portion of the events or omissions giving rise to the claims occurred within the Northern District of Texas.

PARTIES

4. Plaintiff is a 48 year-old natural person residing at 1936 Rainwater Way, Lancaster, Texas, which is located within the Northern District of Texas.

5. Plaintiff is a “person” as defined by 47 U.S.C. § 153(39).

6. Defendant operates as a multi-state managed healthcare company. Defendant places solicitation calls to consumers across the country, including those located within the state of Texas. Defendant is a corporation organized under the laws of the state of Delaware with its registered agent located at 4701 Cox Road, Suite 285, Glen Allen, Virginia.

7. Defendant is a “person” as defined by 47 U.S.C. § 153(39).

8. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives and insurers at all times relevant to the instant action.

FACTS SUPPORTING CAUSES OF ACTION

9. In the fall of 2017, Plaintiff began receiving calls to her cellular phone, (214) XXX-7139, from Defendant.

10. At all times relevant to the instant action, Plaintiff was the sole subscriber, owner, and operator of the cellular phone ending in 7139. Plaintiff is and always has been financially responsible for the cellular phone and its services.

11. Defendant mainly uses the phone number (817) 631-3524 when placing calls to Plaintiff’s cellular phone, but upon belief, it has used other numbers as well.

12. Upon information and belief, the above-referenced phone number ending in 3524 is regularly utilized by Defendant during its solicitation and marketing activities.

13. Plaintiff was confused as to why Defendant was contacting her, as she does not have any business relationship with it.

14. During answered calls from Defendant, Plaintiff has experienced a recorded message asking for “Laseannah Givens,” who is Plaintiff’s daughter.

15. Plaintiff has remained on the line to apprise Defendant’s representatives to stop contacting her, as the cellular phone does not belong to Ms. Givens.

16. Plaintiff has also opted out of receiving Defendant’s phone calls using its automated prompts.

17. Despite Plaintiff’s efforts, Defendant has continued to relentlessly place phone calls to Plaintiff’s cellular phone up until the date of the filing of this action.

18. Plaintiff has received not less than 24 phone calls from Defendant since asking it to stop contacting her.

19. With the goal of specifically addressing Defendant’s conduct, Plaintiff has expended approximately \$47.00 to purchase and maintain an application subscription on her cellular phone to quell Defendant’s contacts, resulting in pecuniary loss. However, Defendant’s communications have persisted.

20. Frustrated over Defendant’s conduct, Plaintiff spoke with Sulaiman regarding her rights, resulting in expenses.

21. Plaintiff has been unfairly and unnecessarily harassed by Defendant's actions.

22. Plaintiff has suffered concrete harm as a result of Defendant’s actions, including but not limited to: invasion of privacy, aggravation that accompanies solicitation telephone calls, emotional distress, increased risk of personal injury resulting from the distraction caused by the never-ending calls, increased usage of her telephone services, loss of cellular phone capacity,

diminished cellular phone functionality, decreased battery life on her cellular phone, and diminished space for data storage on her cellular phone.

COUNT I – VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT

23. Plaintiff repeats and realleges paragraphs 1 through 22 as though fully set forth herein.

24. The TCPA, pursuant to 47 U.S.C. § 227(b)(1)(iii), prohibits calling persons on their cellular phone using an automatic telephone dialing system (“ATDS”) without their consent. The TCPA, under 47 U.S.C. § 227(a)(1), defines an ATDS as “equipment which has the capacity...to store or produce telephone numbers to be called, using a random or sequential number generator; and to dial such numbers.”

25. Defendant used an ATDS in connection with its communications directed towards Plaintiff’s cellular phone. During answered calls from Defendant, Plaintiff has experienced a recorded message, which is instructive that an ATDS is being utilized to generate the calls. Moreover, the nature and frequency of Defendant’s contacts points to the involvement of an ATDS.

26. Defendant violated the TCPA by placing at least 24 phone calls to Plaintiff’s cellular phone using an ATDS without her consent. Plaintiff does not have any business relationship with Defendant nor has she ever given it permission to call her cellular phone, as evidenced by the fact that Defendant was looking to speak with Plaintiff’s daughter. Either way, any consent Plaintiff *may* have given to Defendant was explicitly revoked by Plaintiff’s demands that it cease contacting her, as well as her efforts to opt-out using Defendant’s prompts.

27. The calls placed by Defendant to Plaintiff were regarding business transactions and not for emergency purposes as defined by the TCPA under 47 U.S.C. § 227(b)(1)(A)(i).

28. Under the TCPA, pursuant to 47 U.S.C. § 227(b)(3)(B), Defendant is liable to Plaintiff for at least \$500.00 per call. Moreover, Defendant's willful and knowing violations of the TCPA should trigger this Honorable Court's ability to triple the damages to which Plaintiff is otherwise entitled to under 47 U.S.C. § 227(b)(3)(C).

WHEREFORE, Plaintiff, VIRAY HEATH, respectfully requests that this Honorable Court enter judgment in her favor as follows:

- a. Declaring that the practices complained of herein are unlawful and violate the aforementioned statutes and regulations;
- b. Awarding Plaintiff damages of at least \$500.00 per phone call and treble damages pursuant to 47 U.S.C. §§ 227(b)(3)(B)&(C);
- c. Awarding Plaintiff costs and reasonable attorney fees;
- d. Enjoining Defendant from further contacting Plaintiff; and
- e. Awarding any other relief as this Honorable Court deems just and appropriate.

Dated: January 24, 2018

Respectfully submitted,

s/ Nathan C. Volheim (Lead Attorney)
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